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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,358	03/30/2004	Yojiro Kinoshita	001309.00059	4108
22907	7590	09/21/2005	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			GARRETT, ERIKA P	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/812,358

Applicant(s)

KINOSHITA ET AL.

Examiner

Erika Garrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment filed on 07/01/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) 7,9,11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2,5 and 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear and confusing to what a bent degree is?

The applicant attention is drawn to the phrase "wherein the position the pin engages the engaging hole can be varied", this is unclear and confusing. How can this be varied? How is the bent degree selectively fastening one side of the support member?

The applicant attention is drawn to the phrase "the bent degree of the support member is varied by selectively fastening". How is the bent degree selectively fastening one side of the support member?

The applicant attention is drawn to the phrase in claim 5 lines 4-6, is unclear and confusing.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5 and 12-17 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Elton (5,286,087). Elton discloses the use of a backrest for chair (10) comprising frame (18) elements arranged in pairs at right and left sides (20,22), a flexible support member (36) that bridges the frame elements to support a load of a body of a seated person and an adjust mechanism (38) that can change a bent degree of the support member in multiple states and that can maintain the state against the load of the seated person; wherein the adjust mechanism is engaging structure between a pin (56) one of the support member and the frame adjust mechanism mounted on either element and at least one engaging hole (58) formed on the other and an engaging portion where the pin makes an engagement with the engaging hole can be varied, see figures 2-4. In regards to claim 2, wherein the adjust mechanism (38) is arranged at least one of the right and left sides and the bent degree of the support member is varied by selectively fastening one end side of the support member one of multiple different portions of the frame element locating at a corresponding side. In regards to claim 5, wherein the engaging hole has multiple engaging edge portions that make an engagement with the pin, and holds the pin when the load of the seated person is applied to the support member and the engaging edge portions are communicating each other and the pin can be changed from a state of engaging a engaging edge portion to state of engaging another engaging edge portion by operating the pin to move along the engaging hole, see figures 3-4. In regards to claim 12, wherein the adjust mechanism has an operating portion (16) to operate the

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support member in order to change a bent degree of the support member; and the operating portion is exposed to a side portion of a back face. In regards to claims 13-14, the support member is arranged at a height generally corresponding to a lumbar of the seated person. In regards to claims 15-17, further comprising a covered bag shaped upholstery member.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-2,5 and 12-17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 571-272-6859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG

  
September 15, 2005

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600